

Memorandum

TO: Oil and Gas Research Council

FR: Karlene Fine, Industrial Commission Executive Director

DT: November 20, 2006

RE: Proposed Legislation

As the Council discussed earlier this year, one of the critical issues facing the oil and gas industry is transportation. The State saw a significant impact on the price of North Dakota oil this year because of the inability of our producers to move oil out of state. A white paper was prepared by Lynn Helms and Ron Ness that discussed this matter. (I've attached a copy of that paper as background information.) In that white paper a number of suggested solutions were outlined. One of those solutions was the establishment of a Pipeline Transportation Authority.

After considering three different options, Lynn, Ron and I have drafted legislation that establishes a Pipeline Authority under the jurisdiction of the Industrial Commission with management responsibility of the Authority being placed under the Oil and Gas Research Council. (The two other options considered were 1) combining the Pipeline Authority with the Transmission Authority—the entity established last legislative session to be a catalyst for building transmission lines for electricity—and 2) an independent Pipeline Authority under the jurisdiction of the Industrial Commission, or possibly the Department of Mineral Resources, with funding for staffing to come from the State's General Fund.) What is anticipated in this bill draft is that staffing would be hired with responsibility to promote both the Oil and Gas Research Program and the Pipeline Authority. The funding for that staffing would come from the Oil and Gas Research Council Administration allocation. Under this structure the Pipeline Authority would have funding for staff and it would not be necessary for the Authority to compete for grant funding. The staffing would report to the Council/Industrial Commission with the day-to-day management done by the Oil and Gas Research Council's Management Committee (Ron, Lynn and Karlene).

The role of the Pipeline Authority would be to:

- Promote the development of pipeline facilities that support the production, transportation, and utilization of North Dakota energy related commodities (see Section 3 of the bill draft). Note the broad definition of energy related commodities in Section 2—this relates

- to more than just oil and gas and provides flexibility for a number of energy related commodities so an “Authority” doesn’t needed to be created for each type of commodity.
- Serve as an alternative source of financing [see Section 4 (1), (4), (6), (7), (8), (10) and Sections 7 and 9.]
- Partner with investors and pipeline providers [Section 4 (3), Section 6]
- Be a Builder of Last Resort and only for that period of time needed [Sections 5 and 10]
- Join and consult with other state pipeline authorities and pipeline organizations and others [Section 4 (13) (17) and Section 8 (3)]

The proposed legislation further provides that:

- Public Service Commission will continue to have siting authority. However, in regard to rate setting, the Pipeline Authority rates would be exempt from Public Service Commission authority. [Section 8] Interstate pipeline rates would be subject to FERC jurisdiction.
- There would be a property tax exemption of Pipeline Authority property for ten years with payments in lieu of property taxes provided to the counties. [Section 11]
- Any net profit to be transferred to the General Fund at the end of each biennium.[Section 12]
- The Pipeline Authority is exempt from the Administrative Practices Act. [Section 13]
- The Pipeline Authority is exempt from the State’s Procurement requirements [Section 14]
- The Oil and Gas Research Program including the Pipeline Authority would be exempt from accountability reporting requirements. [Section 15]

The last key provision in this draft legislation [Section 16] is the lifting of the limitation of the amount of funding coming into the Oil and Gas Research Fund. Currently the law provides that 2% of the State’s share of the oil and gas taxes up to \$1.3 million be transferred to the Oil and Gas Research Fund. The proposed legislation would remove the \$1.3 million limitation and just state 2% of the State’s share of the oil and gas taxes. For example in the 03-05 biennium that would have resulted in a transfer of \$2,409,567 to the Oil and Gas Research Fund. It is currently forecasted that 2% of the oil and gas taxes in the 05-07 biennium would be \$5,032,000. The current forecast for the 07-09 biennium of 2% of the oil and gas taxes is \$4,968,000. In addition, this proposed legislation provides that any interest on the Oil and Gas Research Fund stays within the Fund.

Lynn, Ron and I will be happy to respond to questions at the meeting regarding this proposed legislation. If the Council is supportive of this proposed legislation and the structure outlined, we would ask that you **adopt a motion recommending to the Industrial Commission that the Commission support the legislation and authorize that the proposed legislation be introduced as an Industrial Commission bill for the 2007 Legislature.**

November 16 – 12:00 noon draft

(This is not in the proper format for submission—once we have finalized text then the Attorney General's Office will be asked to put it into proper format.)

NORTH DAKOTA PIPELINE AUTHORITY

A BILL to create new sections to Chapter 54-17.6 and to amend and reenact 54-17.6 to provide for the North Dakota pipeline authority, to provide for the planning, constructing, owning, financing, maintaining, operating, and disposing of pipeline facilities and related infrastructure, and to authorize issuance of revenue bonds; and to amend and reenact subdivision 1 of subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to an Administrative Agencies Practice Act exemption for the pipeline authority.
(This needs to be revised to reflect the additions at the end of this draft.)

SECTION 1. North Dakota pipeline authority. There is created the North Dakota pipeline authority, which shall be governed by the industrial commission and managed by the Oil and Gas Research Council.

SECTION 2. Definitions. Section 54.6-01 is hereby amended as follows:

1. "Authority" means the industrial commission acting as the North Dakota pipeline authority.
2. "Commission" means the North Dakota industrial commission.
3. "Council" means the oil and gas research council.
4. "Energy related commodities" means any substance, element or compound, either gaseous, liquid or solid, associated with the production, refining or processing of crude oil, natural gas, coal or coal by-products including but not limited to oil, natural gas liquids, refined petroleum products, carbon dioxide, hydrogen, ethanol, propane, butanes, ethane, methane, sulphur, helium, synthetic fuels, nitrogen, biodiesel and liquids made from coal.
5. "Natural gas" means hydrocarbons or nonhydrocarbons which at atmospheric conditions of temperature and pressure are in a gaseous phase.
6. "Notice of intent" means the notice a person delivers to the authority indicating willingness to construct pipeline facilities contemplated by the authority or to provide services fulfilling the need for such pipeline facilities.
7. "Pipeline facilities" means pipelines, pumps, compressors, storage and all other facilities, structures and properties incidental and necessary or useful in the transportation, distribution and delivery of energy related commodities to points of sale, consumption or to the point or points of distribution for consumption located within and outside this state.
8. "Project area" means the geographic area in which construction of a pipeline facility contemplated by the authority is likely to occur.

SECTION 3. Pipeline authority purposes. The authority is created for the purpose of diversifying and expanding the North Dakota economy by facilitating development of pipeline facilities to support the production, transportation, and utilization of North Dakota energy related commodities.

SECTION 4. Powers. The authority has all powers necessary to carry out the purposes of this chapter, including the power to:

1. Make grants or loans and to provide other forms of financial assistance as necessary or appropriate for the purposes of sections 1 through ____ of this Act;
2. Make and execute contracts and all other instruments necessary or convenient for the performance of the authority's powers and functions;
3. Acquire, purchase, hold, use, lease, license, sell, transfer and dispose of an undivided or other interest in or the right to capacity in any pipeline system or systems within or without the state of North Dakota in order to facilitate the production, transportation, distribution, or delivery of energy related commodities produced in North Dakota as a purchaser of last resort;
4. Borrow money and issue evidences of indebtedness as provided in sections 1 through ____ of this Act;
5. Receive and accept aid, grants, or contributions of money or other things of value from any source, including aid, grants, or contributions from any department, agency, or instrumentality of the United States, subject to the conditions upon which the aid, grants, or contributions are made and consistent with the provisions of sections 1 through ____ of this Act;
6. Issue and sell evidences of indebtedness in an amount or amounts as the authority may determine, but not to exceed eight hundred million dollars, plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the authority is created under sections 1 through ____ of this Act, provided that the amount of any refinancing shall not be counted toward such eight hundred million dollar limitation to the extent it does not exceed the outstanding amount of the obligations being refinanced;
7. Refund and refinance its evidences of indebtedness;
8. Make and execute interest rate exchange contracts;
9. Enter lease-sale contracts;
10. Pledge any and all revenues derived by the authority under sections 1 through ____ of this Act or from a pipeline facility, service, or activity funded sections 1 through ____ to secure payment or redemption of the evidences of indebtedness;
11. To the extent and for the period of time necessary for the accomplishment of the purposes for which the authority was created, plan, finance, develop, acquire, own in whole or in part, lease, rent, and dispose of pipeline facilities;
12. Enter contracts to construct, maintain, and operate pipeline facilities;
13. Consult with the public service commission, regional organizations, and any other relevant state or federal authority or persons as necessary and establish reasonable fees, rates, tariffs, or other charges for pipeline facilities and all services rendered by the authority;
14. Lease, rent, and dispose of pipeline facilities owned pursuant to sections 1 through ____ of this Act;
15. Investigate, plan, prioritize, and propose corridors for the transport of energy related commodities;

16. Make and execute contracts and all other instruments necessary or convenient for the performance of the authority's powers and functions with other state pipeline authorities;
17. Cooperate with and participate in joint projects, research projects and other activities with other state pipeline authorities and participate in and join regional pipeline organizations; and
18. Do any and all things necessary or expedient for the purposes of the authority provided in sections 1 through ____ of this Act.

SECTION 5. Authority may act.

1. Before exercising its powers to construct pipeline facilities granted to it in sections 1 through ____ of this Act except for subsection 3 of Section 4, the authority shall publish, in a newspaper of general circulation in North Dakota and in a newspaper in the project area, a notice describing the need for pipeline facilities contemplated by the authority. A person willing to construct the pipeline facilities or furnish services to satisfy the needs described in the notice has a period of one hundred eighty days from the date of last publication of the notice within which to deliver to the authority a notice of intent. After receipt of a notice of intent, the authority may not exercise its powers to construct pipeline facilities unless the authority finds that exercising its authority would be in the public interest. In making such a finding, the authority shall consider factors including economic impact to the state, economic feasibility, technical performance, reliability, past performance and the likelihood of successful completion and ongoing operation.
2. The authority may require a person giving a notice of intent to provide a bond and to submit a plan for completion of the pipeline facilities or commencement of services within a period of time acceptable to the authority. If no person submits an adequate plan or bond as required by the authority, the authority may proceed with contracting for construction of the facility described in the authority's published notice.

SECTION 6. Authority may participate upon request. The authority may participate in a pipeline facility through financing, planning, joint ownership, or other arrangements at the request of a person giving a notice of intent.

SECTION 7. Evidences of indebtedness.

1. Evidences of indebtedness of the authority must be authorized by resolution of the industrial commission and may be issued in one or more series and must bear such date or dates, mature at such time or times, bear interest at such rate or rates of interest per year, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide. Evidences of indebtedness of the authority are to mature not more than forty years from the date of issue. Evidences of indebtedness of the authority may be sold at such time or times and at such price or prices as the authority determines.

2. Evidences of indebtedness and grants, loans, or other forms of financial assistance issued by the authority are payable solely from:
 - a. Revenues that may be received by the authority from pipeline facilities, services, or activities funded under this chapter with the proceeds of the authority's evidences of indebtedness, subject only to prior payment of the reasonable and necessary expenses of operating and maintaining such pipeline facilities except depreciation.
 - b. Amounts received by the authority under loans authorized under sections 1 through of this Act.
 - c. Revenues received by the authority under this chapter from any source other than general tax revenues.
3. The evidences of indebtedness are not subject to taxation by the state or any of its political subdivisions and do not constitute a debt of the state of North Dakota within the meaning of any statutory or constitutional provision and must contain a statement to that effect on their face.
4. The authority may establish and maintain a reserve fund for evidences of indebtedness issued under sections 1 through of this Act. There must be deposited in the reserve fund:
 - a. All moneys appropriated by the legislative assembly to the authority for the purpose of the reserve fund.
 - b. All proceeds of evidences of indebtedness issued under sections 1 through of this Act required to be deposited in the reserve fund by the terms of any contract between the authority and the holders of its evidences of indebtedness or any resolution of the authority.
 - c. Any lawfully available moneys of the authority which it may determine to deposit in the reserve fund.
 - d. Any moneys from any other source made available to the authority for deposit in the reserve fund or any contractual right to the receipt of moneys by the authority for the purpose of the fund, including a letter of credit, surety bond, or similar instrument.
5. The authority must include in its biennial request to the office of the budget the amount, if any, necessary to restore any reserve fund established under this section to an amount equal to the amount required to be deposited in the fund by the terms of any contract or resolution approved by the commission.
6. Any pledge of revenue made by the industrial commission as security for the authority's evidences of indebtedness is valid and binding from time to time when the pledge is made. The revenues or other moneys so pledged and thereafter received by the authority are immediately subject to the lien of any such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, regardless of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the authority.
7. The authority may obtain from any entity of the state, any department or agency of the United States of America, or any nongovernmental insurer any insurance, guaranty, or liquidity facility, or from a financial institution a letter of credit to the extent such insurance, guaranty, liquidity facility, or

letter of credit now or hereafter available, as to, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any evidences of indebtedness issued by the authority pursuant to this chapter, and may enter into any agreement or contract with respect to any such insurance, guaranty, letter of credit, or liquidity facility, and pay any required fee, unless the same would impair or interfere with the ability of the authority to fulfill the terms of any agreement made with the holders of its evidences of indebtedness.

8. After issuance, all evidences of indebtedness of the authority are conclusively presumed to be fully authorized and issued under the laws of the state, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the authority.
9. When the authority has issued evidences of indebtedness and pledged the revenues of the pipeline facilities for the payment thereof as herein provided, the authority shall operate and maintain the pipeline facilities and shall impose and collect fees and charges for the services furnished by the pipeline facilities, including those furnished to the authority itself, in the amounts and at the rates as are fully sufficient at all times to:
 - a. Pay the expenses of operating and maintaining the pipeline facilities;
 - b. Provide a debt service fund sufficient to assure the prompt payment of principal and interest on the evidences of indebtedness at maturity; and
 - c. Provide a reasonable fund for contingencies as may be required by the resolution authorizing the evidences of indebtedness.

SECTION 8. Public service commission jurisdiction and consultation.

1. The authority and the pipeline facilities built under sections 1 through of this Act, until sold or disposed of by the authority, are exempt from the provisions of title 49 except for Chapter 49-22. Upon sale or disposal by the authority, pipeline facilities built under sections 1 through of this Act are subject to the provisions of title 49.
2. The authority shall consult with the public service commission with respect to the rates charged by the authority for use of its pipeline facilities and such rates must thereafter be considered just and reasonable in proceedings before the public service commission pursuant to section 49-05-06.
3. The authority shall conduct its activities in consultation with pipeline providers, energy related commodities interests, and other persons having relevant expertise.

SECTION 9. Bonds as legal investments. The bonds of the authority are legal investments which may be used as collateral for public funds of the state, insurance companies, banks, savings and loan associations, credit unions, investment companies, trustees, and other fiduciaries which may properly and legally invest funds in their control or belonging to them in bonds of the authority. The state investment board may invest in bonds of the authority in an amount specified by the state investment board.

SECTION 10. Disposal of pipeline facilities.

1. Before becoming an owner or partial owner of a pipeline facility or acquire capacity in a pipeline system, the authority shall develop a plan identifying:
 - a. The public purposes of the authority's ownership;
 - b. Conditions that would make the authority's ownership no longer necessary for accomplishing those public purposes; and
 - c. A plan to divest the authority's ownership interest as soon as economically prudent once those conditions occur.
2. For pipeline facilities that are leased to another entity by the authority, at the end of the lease, absent default by the lessee, the authority shall convey its interest in the pipeline facilities to the lessee.
3. For pipeline facilities that are owned by the authority without a lessee, the authority shall divest itself of ownership as soon as economically prudent in accordance with the divestiture plan developed pursuant to subsection 1.

SECTION 11. Pipeline authority exemption. Property, not including land, is exempt from taxation during construction and for the first ten full taxable years following initial operation if it consists of a pipeline, constructed after 2006, and necessary associated equipment for the transportation or storage of energy related commodities if constructed under sections 1 through ____ of this Act. Pipeline facilities property described in Section 2 is subject to payments in lieu of property taxes during the time it is exempt from taxation. For the purpose of these payments, pipeline facilities property described in Section 2 must be valued annually by the state board of equalization in the manner that other pipeline facilities property valuations are certified. The county auditor shall calculate taxes on the pipeline facilities property described in Section 2 in the same manner that taxes are calculated on other pipeline facilities property. Not later than December twenty-sixth of each year, each county auditor shall submit a statement of the amount of taxes that would have been assessed against pipeline facilities property, exempted under this section, to the state treasurer for payment. The state treasurer shall make the required payment to each county not later than March first of the following year, and the county auditor shall distribute the payments to the political subdivisions in which the exempt pipeline facilities property is located.

SECTION 12. Transfers to general fund. The authority's net income from any project related to activities of the authority will be transferred to the general fund during the last month of the biennium.

SECTION 13. AMENDMENT. Subdivision 1 of subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

- I. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, and the North Dakota transmission authority, and the North Dakota pipeline authority.

Section 14. AMENDMENT. Subsection 5 of section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

5. Procurements through a contract or other instrument executed by the industrial commission under ~~chapter~~ chapters 54-17.5, and 54-17.6.

Section 15. AMENDMENT. A new subdivision to subsection 54-60.1-01(2), of the North Dakota Century Code is created and enacted as follows:

- q. Federal or state assistance for the oil and gas research, development, and marketing program under chapter 54-17.6.

Section 16. AMENDMENT. Section 57-51.1-07.3 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07.3 Oil and gas research fund - Deposits - Continuing appropriation. There is established a special fund in the state treasury to be known as the oil and gas research fund. ~~In the 2003-05 biennium, the first fifty thousand dollars of revenue from the state's share of the oil and gas production tax and oil extraction tax must be deposited into a special fund known as the oil and gas research fund. In the 2003-05 biennium, if actual revenues for the 2001-03 biennium from the state general fund share of the oil and gas production tax and oil extraction tax exceeded seventy-one million sixty-four thousand dollars, the excess up to five hundred thousand dollars must be deposited in a special fund known as the oil and gas research fund, as provided in this section. After the 2003-05 biennium, two~~ Two percent of the state's share of the oil and gas gross production tax and oil extraction tax revenues ~~that are deposited into the state general fund, up to one million three hundred thousand dollars per biennium,~~ must be deposited into the oil and gas research fund. The state treasurer shall transfer into the oil and gas research fund two percent of the state's share of the oil and gas production tax and the oil extraction tax revenues that have been deposited into the general fund for the previous three months. All money deposited in the oil and gas research fund, and interest on all such moneys, are is appropriated as a continuing appropriation to the council to be used for purposes stated in chapter 54-17.6.